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938-RA-202-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 REVIEW APPLICATION (CIVIL) NO. 202 OF 2025
IN MCA/279/2023

Kamilkhan Noorkhan Pathan
VERSUS
Shamabi W/o Kamilkhan Pathan

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Mr. Hamzakhan Ismailkhan Pathan, Advocate for Applicant.
Mr. G. R. Syed, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.
DATE : 7th OCTOBER 2025.

PC :-

1. Heard the learned Advocates for the parties.
2. This application is filed seeking review of the order dated 2nd July 2025 passed in Misc. Civil Application No. 279 of 2023.
3. By way of the said order, the proceeding filed by the present applicant-husband at Purna Dist. Parbhani was transferred to the Court at Udgir Dist. Latur on an application filed by the respondent-wife.
4. The grounds raised in the application are that, when the order was passed, the husband was not before this Court. Though the notice was

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served on the husband, the matter could not be taken on the returnable date. It was taken within short time thereafter. The husband was under impression that the matter would be adjourned for at least three-four weeks.

5. Further ground raised is that before the Court, he could not point out that at Udgir, there are two FIR lodged at his instance, as he was assaulted by the relatives of the wife. Though the complaints are filed at Purna, it is for the reason that he could not go to Udgir for lodging the complaint due to fear in his mind.

6. The learned Advocate Mr. Pathan vehemently argued the application. He submits that for the reason stated in the application, he could not address the Court. There is no fault on the part of the applicant-husband. The order is passed without hearing him. He relies upon the judgment passed by the Madras High Court in the case of ***N. Dhanasekaran Vs. A. Vinoba and Anr.*** decided on 23rd February 2022 in Review Application No.67 of 2015, to submit that the review application can be filed in three contingencies (i) discovery of new and important

matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of record and (iii) for any other sufficient reason. He submits that in the present case, clause (iii) is applicable.

7. His further prayer is to transfer the proceeding from Udgir to any other place convenient to both the parties or to a place for equal distance. He submits that Section 24(1)(b)(ii) of Code of Civil Procedure, 1908, the proceeding can be transferred to any Court subordinate to the Court transferring the proceeding and competent to try the matter. He submits that the proceeding need not be necessarily transferred only to the Court where the wife resides but can be transferred even to Ahmedpur.

8. Learned Advocate Mr. Sayed vehemently opposed the application. He submits that sufficient opportunity was given to the husband in the Misc. Civil Application. No reason is stated as to why the husband could not remain present when the order was passed. He further submits that

the custody petition is also filed by the husband at Purna Dist. Parbhani and the same is sought to be transferred to the Court at Udgir Dist. Latur as the children are residing at Purna. In view of Section 9 of the Guardians and Wards Act, 1890 the proceedings are required to be filed where the children reside. He thus submits that the proceeding need not be transferred to any place other than Udgir, as it is already transferred to Udgir under the orders of this Court. He further submits that even the custody petition is sought to be transferred to Udgir bearing Misc. Civil Application No.348 of 2023 which is on today's board at Sr. No.952.

9. This Court has considered the submissions. No about that the review application is maintainable on three contingencies as submitted by the learned Advocate for the applicant. However, while transferring the proceeding, the Court has to consider not only the convenience of the parties but also propriety. This Court does not find any propriety in transferring the matter to a third place where both the parties are not residing. So far as apprehension is concerned, it is rightly pointed out by the learned Advocate for the respondent that so-called instances are

from 2012 and not from the recent past.

10. From the record, it is seen that one offence was also registered in 2003. This Court finds that these are not sufficient grounds to transfer the proceeding. Though in principle the learned Advocate for the applicant is correct, this Court has to consider the facts of the case while deciding the matter. In the present application, no error apparent on the face of record, as such is pointed out. This case is also not covered by clause (i) that fresh evidence which was not available as in spite of service, it is the husband who did not appear before this Court. No such ground is permissible when the party does not appear before the Court even after service of notice.

11. Thus, this Court finds that no case is made out to review the Mice. Civil Application. The review application stands dismissed. No order as to costs.

[KISHORE C. SANT, J.]